September 13, 2001

(1)

Supreme Court, U.S.
FILED

01-472 SEP 13 2001

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

GEORGE J. FOXX,

Petitioner,

v.

DEPARTMENT OF THE NAVY,
John H. Dalton, Secretary,

Respondent,

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

GEORGE J. FOXX
P.O. Box 4173
Tampa, FL 33677
(813) 963-3699

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40 pp

QUESTIONS PRESENTED

1. Does an intentional breached parties' agreement regarding personal and venue jurisdiction constitute a void judgment?
2. Is jurisdiction proper in the Appeals Court under Rule 60(b) for de novo review of void venue transfer and void judgments?
3. Was it proper for the Appeals Court to dismiss Petitioner's appeal regarding personal and venue jurisdiction in a bias manner using a different standard?
4. Was it proper for the Appeals Court to dismiss Petitioner's appeal based on the information for the Appellee's 17-day excessive tardy brief that carried the aura and implications of improper ex parte communication?

FOXX v. DEPARTMENT OF THE NAVY

CERTIFICATE OF INTERESTED PERSONS

AND

CORPORATION DISCLOSURE STATEMENT

The following have an interest in the outcome of this case:

Donna A. Bucella, Counsel for the Respondent

Mac Cauley, United States Attorney

Department of the Navy, Respondent

George J. Foxx, Petitioner

Sheryl L. Loesch, Clerk of the Court

Hon. Elizabeth A. Kovachevich, Chief District Judge

Steven A. Nesbit, Counsel for the Respondent

Tamra Phipps, Counsel for the Respondent

David P. Rhodes, Counsel for the Respondent

Hon. Charles R. Wilson, Circuit Judge

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42 U.S.C. § 2000e-5, 16 et seq.
The United States Constitution

OPINION BELOW

On August 14, 2001 and August 23, 2001, respectively, the United States Court of Appeals for the Eleventh Circuit, dismissed *sua sponte* Petitioner's appeal, while denying Petitioner the requested relief from void judgments. Copies of the decisions are enclosed in the Appendix. On August 14, 2001 and August 23, 2001, in lieu of a Mandate, the Eleventh Circuit Appeals Court dismissed Petitioner's request for due process.

JURISDICTIONAL STATEMENT

The Petition for Writ of Certiorari is made pursuant to 28 U.S.C. § 1254(1). Jurisdiction for the appeal was pursuant to 28 U.S.C. § 1291, appeal from a final judgment of the district court that constituted a void judgment based on fraud. Jurisdiction for the original proceedings was pursuant to the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-5, 16 et seq. employment discrimination, separate and subsequent wrongdoings and violations of due process before, during, and after the wrongful employment dismissal, intentional breach of parties' agreement regarding venue and personal jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The case involved race discrimination and reprisal in employment, fraudulent behavior, inhibition of exonerating evidence, prohibiting personnel practices not consistent with the "Doctrine of Fairness," obstruction of justice, and violations of civil, due process, and procedural rights based upon Title VII, The Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-5, 16 and the provisions guaranteed by the

U.S. Constitution. Also, intentional breached parties' agreement where void judgment was in effect over the parties due to lack of personal jurisdiction in transferred venue.

STATEMENT OF THE CASE

In a timely manner, Petitioner filed a motion for relief or order pursuant to Fed. R. Civ. Proc. 59 and 60(b) in District Court, Middle District of Florida, before Elizabeth A. Kovachevich, Chief District Judge. This motion was based on "new evidence" and the presentation of evidence that violated Rule 60(b) void judgments. See detailed background of the proceedings in *Foxx v. Dalton*, 46 F.Supp 2d 1268 (1999) and *Foxx v. Danzig*, DC, E.D., VA, 99-558-A. Counts I-VI of Petitioner's complaint alleged that Respondent had been **"deceitful"** toward the Petitioner in the dismissal of Petitioner from the position held in Panama. In Counts II-VI, the Court DENIED DISMISSAL.

Petitioner was an employee of the Respondent for 18 years, and was fired for an alleged $27 travel voucher error. Petitioner contended that there was no intent to defraud the Respondent, as there was "no loss incurred." In addition, Petitioner paid Respondent the sum of $936.25 as good faith for the direct and indirect costs associated with the $27 error, and was still fired. There had been **"five"** Caucasians who were similarly situated and were treated differently and corroborated by witnesses in the U.S. Southern Command agency's personnel office, namely the personnel officers, who had direct input into the personnel decisions that resulted in **"unfair treatment"** of Petitioner versus the similar, situated five Caucasians.

The firing of the Petitioner had equated to unfair and excessive disciplinary action, and Petitioner should not have been fired, see witness statement and declaration (A5).

Petitioner had been a model employee, holding the position of supervisory computer programmer analyst, Information Systems Division Director, and Command Automated Data Processing Security Officer, NM-11, for the U.S. Naval Station Panama Canal. Petitioner, a Vietnam veteran, had accumulated over 60 career awards and commendations, and had "no" disciplinary action prior to the firing.

The Eleventh Circuit erred in denying Petitioner due process despite being a supervisory court when presented with disputed evidence weighty enough warranting a reversal and remand. The nucleus of this case has expanded for nearly **12** years (May 1989 to present), before more than **100** decision-makers (judges), and **24** venues, including this Honorable Court for the fourth time seeking overdue justice and relief.

Before the Eleventh Circuit regarding the issues of void judgments, lack of personal jurisdiction, breached parties' agreements, the Appeals Court violated its own Rules, 11th Cir. 31 and 42-2(f) by accepting a **17-day late** Appellee's brief and then using the provisions stated in that non-conforming 17-day late brief to dismiss Petitioner's appeal without allowing Petitioner the chance to reply to the brief. That late brief was further **"suspect"** in its contents of having illegal and **improper ex parte** communication with one of the Circuit Judges who formally held the U.S. Attorney's position before joining the present Appeals Court. This was blatant and obvious that the Respondent had failed the standards of the Rules of the Appeals Court when an **"unsolicited attenuating helping hand"** from the Clerk's Office assisted the Respondent who had already been absent in submitting the late brief. See Appendix A3 (Notice from the Clerk's Office).

This behavior was so egregious to say the least and "harmful" enough to have Petitioner's appeal dismissed. In the Certificate of Interested Persons, the Respondent made reference to the Circuit Judge, when in more than two years, his name was never mentioned. This sort of alert was the **"superlative of opprobrium,"** casting doubts on the integrity of that Court.

The issues in this case are crucial to **"fundamental fairness"** in the workplace, while eliminating psychological trauma, abating racial inequality, and removing prejudicial favoritism while engaging in prohibited personnel practices, and further desisting **"judicial misconduct"** when the Appeals Court violates its own Rules in favor of shielding corruption.

In sum, while in the Middle District of Florida, the Respondent intentionally breached the parties' agreement over "repeated objections" enabling the Respondent to use the district courts in a fraudulent and unethical manner to **"cheat"** the Petitioner out of due process and a retirement. This error created paths for void judgments because there was a lack of personal and venue jurisdiction over the parties based on the parties' agreement and violations under Rule 60(b) and 59 (evidence denial for a new trial).

Moreover, Petitioner submitted to the Middle District Court his motion for relief, the Middle District Court accepted the motion, stamped the Court's identification on the motion, but then failed to catalog the motion on the certified docket sheet, then abrogated the motion to a void venue. The furtherance of the submissions to a court that lacked personal and venue jurisdiction was void pursuant to Rules 60(b) and 59 respectively.

REASON FOR GRANTING
THE WRIT OF CERTIORARI

The nucleus of this case is nearing 12 years. The **"fairest and balanced"** way to conclude this case is to remand this case back to the district court with instructions to place this case "back on the trial docket." It is clear from the evidence that Petitioner with more than 18 years of vested dedicated service at the time of firing was subjected to "extreme racial animus, unfair personnel practices, and harmful error before, during, and after the firing process." Petitioner was the victim of motivated discrimination despite his protected rights, being in a protected class, and procedural obligations pursuant to 42 U.S.C. § 2000e-16, proscribed provisions of the Civil Service Reform Act, EEO rules and regulations, and the provisions guaranteed in the U.S. Constitution. Further, the firing of Petitioner was so racially motivated that Respondent's behavior violated the "Principles of Decency." This Honorable Court in all diligence should remand this case back for finality and monitor such case for a fair outcome. And if there was impropriety in the proceedings below, take the appropriate action where deemed proper and in the interest of justice.

ARGUMENT: IT WAS REVERSIBLE ERROR
TO DISMISS PETITIONER'S APPEAL

The District Court erred when it granted Respondent's motion for change of venue that created confusion, conflicts, and void judgment of the parties. Pursuant to Rule 60(b), no further action was proper when the court of wanting lacked personal and venue jurisdiction, See *Scutieri v. Paige*, 808 F.2d at 791, and Moore's Federal Practice, 3D § 60.44[3] **Lack of Personal Jurisdiction.**

The Eleventh Circuit had applied precedence in *Loral Corp. v. Swiftships, Inc.*, No. 95-9249, (1996) before Hons. Anderson, Black, and Henderson; *Sewell v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 95-4354, (1996) before Hons. Cox, Barkett, and Bright. But denied Petitioner relief and due process in Petitioner's appeal before Hons. Anderson, Black, and Hull. This was **"bias and not consistent"** neither with the integrity of the Court, nor with Rule 60(b) relief from void judgments, or the spirit of **"fair practice,"** as the standards set by this Honorable U.S. Supreme Court.

In pointing out the Respondent's fraudulent behavior, evidence of inhibition and obstruction of exonerating evidence should not have been allowed to escape the Eleventh Circuit as a supervisory court, and should have been remanded back to the district court.

The Eleventh Circuit, in *XYZ Options, Inc.*, citing the Supreme Court in *Pepper v. Litton*, 308 U.S. 295 (1939) looked beneath the fraudulent scheme and fraud upon the court, but denied Petitioner the same due process. The evidence pointed to corruption, lies and deceit, and fraud upon the court. Now, judicial misconduct regarding the 11th Cir. Rules appear to be and are certainly a possibility.

Petitioner maintained that Respondent had engaged in fraudulent behavior from the onset and cited *United States v. Schlei* (11th Cir.) citing *Brady*, 373 U.S. 87, 83 S.Ct. at 1196-97 stating **"suppression by the Government of evidence favorable to an accused upon request violates due process when the evidence is material to guilt or punishment."** The Respondent withheld evidence regarding the five Caucasians' misconduct in this case. There was "clear and convincing evidence" corroborated via witnesses' account and declaration for the "provisions of deceit" and should be allowed to manifest itself before a trier of the facts (a demanded jury).

The separate and subsequent wrongdoings are governed by *Blair v. City of Greenville*, 649 F.2d 365, 368 (5th cir. 1981) citing J.W. Moore & T.S. Currier, Moore's Federal Practice 621, et seq. (1980). **"A subsequent wrong constitutes a new cause of action."** The unlawful holding of Petitioner's household goods for 18 months and causing more than $14,000 worth of damages by Respondent, clearly was wrong and had nothing to do with promoting the efficiency of the service or the firing, but was retaliation and reprisal for pursuing this litigation. In fact, such wrongful actions proved "motivated racial intent and animus" toward the Petitioner. The violations of Petitioner's personal privacy and household goods were separate and subsequent wrongdoings.

The inhibition of exonerating evidence was corruption by the Respondent that four Navy Caucasians (S. Danielson, M. Birge, R.A. Kelly, and W. Wing) had committed more egregious offenses than the alleged error by the Petitioner, and to treat the Caucasians very differently from Petitioner goes to the core that Petitioner was indeed treated in a disparate manner. The $27 error reason (six months later after occurring) was a **"motivated false and fake"** reason for the firing. See this unanimous Honorable Court's precedence in *Reeves v. Sanderson Plumbing Products, Inc.*, S.Ct. (99-536, June 12, 2000) 197 F.3d 668, reversed and 42 U.S.C. § 2000e-16.

Petitioner proved a prima facie case of discrimination, as being in a protected case, *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 252-253 (1981), and meeting the requirements as outlined in *McDonnell Douglas v. Green*, 411 U.S. 792 (1973). The supposedly legitimate reason turned out to be a **"false and a fake."** The Petitioner had shifted the burden back the Respondent, and the Respondent has since acknowledged inhibition and the destruction of evidence. Further, if the reason was so legitimate, then every

person similarly situated after Petitioner should have been fired. This was clearly not the case! **It was disparity.**

A Caucasian (H. Von Hollen) before the Petitioner received a letter of reprimand, Petitioner was fired, and the four Navy Caucasians were treated very differently, ranging from no punishment to very little. Even though the five Caucasians and Petitioner all worked for the U.S. Southern Command and knew each other on a first name basis. The Caucasians offenses ranged from travel fraud, theft of U.S. Government property over $2,000, waste of over $50,000, and providing false and perjurious statements to the courts, OPM, and lawful authorities repeatedly to obstruct justice – was certainly unfair and disparate. This had equated to double standard in the workplace using favoritism and animus as the catalyst. This was wrong! The Respondent had inhibited and obstructed this evidence until clearly disclosed in a separate matter before the Merit Systems Protection Board (MSPB, 2000).

The provisions and nucleus of this case has continued to be a spin-off to other cases. For example, in *Foxx v. Office of Personnel Management*, AT-0731-00-0647-I-1, (2000), the evidence of "unfairness" was clear and convincing as demonstrated in Mrs. Mills' Statement and Declaration. See Appendix A5, an in-depth analysis of the discrimination and disparity subjected toward this Petitioner. And clearly stated that Petitioner **should not have been fired** and the firing was unjust. This analysis clearly matched the provisions in *Reeves v. Sanderson Plumbing Products, Inc.* [I, II] for a demanded jury to decide based on the reasoning of this unanimous Court.

To support Petitioner's claim of motivated animus: **(1)** Petitioner was **greeted** with racial animus when reporting to duty, e.g., "Oh Shit!" "We had just bet if you had blue eyes or a beard!" "Guess what our new supervisor is Black!" **(2)** after only a few weeks of reporting to work, Respondent

personnel sent Petitioner racial and hatred material on multiple occasions that were considered "offensive and racist jokes" to wit: "Farmer's Dayvorce" [Nigger-Nagger], "If you are Unhappy" and "Why Worry" [threats], (3) and when Petitioner complained three times, Respondent told Petitioner to ignore such behavior, rather than take corrective actions. Thereafter, (4) Petitioner having to bring his own chair to the Christmas Day, 1989, dinner held at his supervisor's quarters because the Caucasian supervisor "did not" want Petitioner to sit on his furniture, where ample seating were available. (5) Other Caucasian males who were invited did not have to bring their own chair. The Caucasian supervisor's guests laughed at Petitioner standing at the door with his chair in hand.

In addition, (6) Petitioner was threatened to wit: "Leave by sundown or be arrested" and (7) Petitioner's life was placed in danger and Harm's Way recklessly during war conditions in Panama and (8) the denying Petitioner of his earned award for "Operation Just Cause" all were clearly enough evidence for a reasonable jury to decide whether the reason was legitimate or discriminatory. This again shifted the burden to the Respondent where the burden is still cast. The Eleventh Circuit had this evidence before it and still failed to grant the Petitioner a de novo review. This was reversible error!

This case should be remanded with instructions to seek finality on the issues prior to the engagement of void judgments. The issues of discrimination involving the five Caucasians, $14,000 worth of personal damages to Petitioner's household goods, intentional breaching of the parties' agreement, the Respondent's aura at attempting to influence the Court to fraud upon the Court, are ripe for a reversal and remand. Also to be resolved are the violations of civil, due process, and procedural rights while depriving Petitioner of his vested property, pursuant to *Sipes v. United*

States, 744 F.2d 1418. The motivated animus and unfair personnel practices are clearly warranted and should be investigated. The "time" of a Writ of Certiorari is now "ripe."

It was important to note that the Eleventh Circuit Court of Appeals, a supervisory court, should always be above reproach. The dismissal of Petitioner's appeal put that reproach at issue when the Clerk of that Court unsolicited the input of the Respondent and provided unethical assistance to the Respondent after expiration of the Appellee's time to respond had occurred. This prejudicial act was harmful in providing the catalyst for the dismissal, the information in the late brief was used inappropriately. Also, the clearest and obvious notion of improper ex parte communication was present in violation of the 11 Cir. Rules 31 and 42-2(f). This was very egregious, indecent, and bias – enough to warrant reversal and remand for clarification of the issues.

Petitioner's appeal was treated with bias and disregard for the established Rules and precedence, and should be reviewed.

Finally, this Petitioner is appearing before this Honorable Court for the **"fourth"** time. In over 11 years, Petitioner never enjoyed full, fair, and uninhibited access to evidence or proper access to the courts. Simply stated: the process was poisoned from the start and continued. And at each phase or forum, more poison and corruption became present. When Petitioner presented these **"lies and deceits of poison"** the courts overlooked this fraud, subversion, obstruction, and blatant deprivation of due process and mask Respondent's behavior in either "unpublished decisions" or dismissed this Petitioner. This was wrong! Petitioner is again appearing before this Honorable Court in search of justice, truth, and fairness in this venue. This Honorable Court of last access **"must"** make itself available to this Petitioner. This Court must according to the laws and the Constitution look at the merits and issues of Rule 60(b) void judgments and include 42 U.S.C. §§ 2000e-5, 16 that were born from the intentional

breached parties' agreement by the Respondent that made personal and venue jurisdiction lacking to a court of wanting.

It was clear in *Foxx v. Dalton*, 46 F.Supp. 2d 1268, that the Court ruled Counts II-VI **DISMISSAL DENIED** because of sound reasoning. However after that, the "poison effect" intensified to the highest level and continued even upon this appearance. As a last stand, now before more than 100 judges, Petitioner is requesting this Writ to examine the lies, deceit, corruption, discrimination, and obstruction of the legal process to deny Petitioner full and fair access to justice. Petitioner was the **"victim"** of employment discrimination and inhibition corroborated by the evidence and should not have been fired as stated in **Appendix A5.**

Petitioner has fought for nearly 12 years "not for fun," but to see justice prevail in this case. The merits of this case can apply to "all" Federal employees and the general public at large who may find them in a similar situation. Petitioner was a veteran who wanted to honor his country with dignity and valor – and did. Petitioner's unfair treatment in this "House of Justice" in search for justice to find it, and have justice hide and shield herself before corruption and misdeeds is wrong! Petitioner is asking this Court to examine the evidence, look at the record and merits of nearly 12 years of fighting, and embrace the principle of fairness according to the doctrine – and act accordingly.

Petitioner has never been before the demanded jury as first sought, but instead been abused by the process. The record clearly demonstrated unfairness and abuse in a "clear and convincing" standard. This case for years has been predicated on racism, prejudice, inhibition, obstruction, "fraud upon or influence upon the court," and Respondent's egregious and heinous behavior – rather than full and fair disclosure of the "five" Caucasians and proper conduct for a fair resolve in making right of those wrongs.

To permit void judgments and the effects thereof (discrimination and reprisal) where personal and venue jurisdiction was not proper based on the parties' agreement to stand is not only a violation of the law, but that of human decency as well. And to fight for nearly 12 years should not become the norm in our society hence forth in search of justice – where there would be none. A granted Writ is right and the proper thing to do for a 2-3 day demanded jury trial to resolve all issues. **Justice demands** Petitioner to be heard.

According to the "Doctrine of Fairness" Petitioner was similarly situated; yet treated differently. All employees in the Federal sector that are similarly situated should be treated fairly because they are entitled to fair and equitable treatment under the law. It was just that the Respondent excluded this Petitioner.

CONCLUSION

Wherefore, this Honorable Court should right a very serious wrong and grant the Writ of Certiorari. Petitioner respectfully requests the reversal and remand with instructions to place this case back on the trial docket, or other remedy that would promote fairness and justice in this case that is long overdue, and **"reverse the manifested injustice."**

Respectfully Submitted,

s/_____
GEORGE J. FOXX
P.O. Box 4173
Tampa, FL 33677
(813) 963-3699

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

GEORGE J. FOXX,

Petitioner,

v.

DEPARTMENT OF THE NAVY,
JOHN H. DALTON, Secretary,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

APPENDIX

GEORGE J. FOXX
P.O. Box 4173
Tampa, FL 33677
(813) 963-3699

APPENDIX

PAGE

Memorandum from Eleventh Circuit
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Rehearing En Banc A1
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Witness Statement and Declaration A5

A1

United States Court of Appeals

Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

August 23, 2001

George J. Foxx
P.O. Box 4173
Tampa, FL 33677

RE: 01-13068-BB

George J. Foxx v. Department of the Navy

DC DKT NO.: 98-01043 CV-T-17

The following action has been taken in the referenced case:

APPELLANT'S PETITION FOR REHEARING AND/OR PETION FOR REHEARING EN BANC IS BEING RETURNED UNFILED AS THIS APPEAL WAS DISMISSED ON AUGUST 14, 2001.

Sincerely.

THOMAS K. KAHN, Clerk

Reply To: Roxanne Green (404) 335-6171

A2

United States Court of Appeals

Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

August 14, 2001

Sheryl L. Loesch
Clerk, U.S. District Court
801 N. Florida Ave., Room 220
Tampa, FL 33602

RE: 01-13068
George J. Foxx v. Department of the Navy
DC DKT NO.: 98001043 CV-T-17

The enclosed certified copy of this Court's order dismissing the appeal for lack of jurisdiction is issued in lieu of the mandate of this court.

Please acknowledge receipt by returning the enclosed copy of this letter.

Sincerely,

THOMAS K. KAHN, Clerk
Reply To: Roxanne Green (404) 335-6171

Encl.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
AUG 14 2001

No. 01-13068-B

GEORGE J. FOXX,

Plaintiff-Appellant,

Versus

DEPARTMENT OF THE NAVY
John H. Dalton, Secretary,

Defendant-Appellee.

Appeal from the United States District Court for the
Middle District of Florida

Before: ANDERSON, Chief Judge, BLACK and HULL Circuit Judges.

BY THE COURT:

This appeal is DISMISSED, sua sponte, for lack of jurisdiction. The May 30, 2001, order denying reconsideration on the order transferring venue is not appealable. Dobard v. Johnson, 749 F.2d 1503, 1506-07 (11th Cir. 1985); Stelly v. Employers National Ins. Co., 431 F.2d 1251, 1253 (5th Cir. 1970). Cert. Denied. 401 U.S. 908 (1971).

No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir. 40-3 and all other applicable rules.

A3

United States Court of Appeals

Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

July 31, 2001

MEMORANDUM TO COUNSEL OR PARTIES

RE: 01-13068-BB
George J. Foxx v. Department of the Navy
DC DKT NO.: 98-01043 CV-T-17

The time for filing appellee's brief has expired. See Fed.R.App.P. 31 and the corresponding circuit rules. The appeal will be submitted to the court for decision upon the record and the briefs that are on file. An appellee who fails to file a brief will not be heard at oral argument (if oral argument is scheduled to be heard) unless otherwise ordered by the court. See 11th Cir. R. 42-2(f).

Sincerely,
THOMAS K. KAHN, Clerk
Reply To: Roxanne Green (404) 335-6171

Submit a motion for leave to file brief out of time in addition to the answer brief.

Encl.

A4

UNITED STATES DISTRICT COURT
MIDDLE DISRICT OF FLORIDA
TAMPA DIVISION

FILED
01 MAY 30 AM 11:05

GEORGE J. FOXX,

Plaintiff,

vs. CASE. NO. 8:98-CV-1043-T-17TGW

JOHN H. DALTON,
Secretary of the Navy,

Defendant.

_____/

ORDER

This cause is before the Court on Plaintiff's Notice of Clarification (Dkt. 24), and Plaintiff's Objections to Court Actions (Dkt. 25).

On April 14, 1999, the Court entered an order granting in part and denying in part Defendant's Motion to Dismiss, and granting a Motion to Change Venue to the Eastern District of Virginia. The case was then transferred. The Court denied a Motion for Reconsideration on June 2, 1999.

The Court now reminds Plaintiff that there is no case pending in the Middle District of Florida over which the undersigned presides. Any requests for relief must be filed where the case is pending, and this case was transferred to the Eastern District of Virginia. If that Court has entered a final order of some kind, Plaintiff should consider pursuing an appeal.

To the extent that the Notice of Clarification (Dkt. 24) and Plaintiff's Objections (Dkt. 25) request relief in this Court, the Court denies the relief.

DONE and ORDERED in Chambers, in Tampa, Florida on this 30th day of May, 2001.

S_____

ELIZABETH A. KOVACHEVICH

United States District Judge

copies to:

All parties and counsel of record

A5

MERIT SYSTEMS PROTECTION BOARD
401 West Peachtree Street NW, 10th Floor
Atlanta, GA 30308-3519

GEORGE J. FOXX

vs. No. AT-0731-00-0647-I-1

U.S. OFFICE OF PERSONNEL
MANAGEMENT & E.P.A.
_____/

WITNESS STATEMENT AND DECLARATION

Name ***Elsie L. Mills***

Tel. ***(937) 233-4501/233-3739***

2. Address ***1540 Hochwalt Ave., Dayton, Ohio 45408-1842***

3. What was your official occupation while you were in Panama? ***I was selected for the position of Chief, Affirmative Employment & Classification. I was temporarily selected for the Civilian Personnel Officer for approximately three months.***

4. Did you know George J. Foxx? ***Yes***

5. Did you know Harvey Von Hollen? ***Yes – His supervisor during my temporary promotion and his co-worker the rest of the time.***

6. Did you know R.A. Kelly? ***Yes – Attended Navy staff meetings as the AF representative and he was there wit other Navy staff employees.***

7. Did you know William "Bill" Wing? ***Yes – Financial/Budget Officer for Navy.***

8. Did you know Charles Berg? ***Yes – Chief, Manpower and my counterpart regarding U.S. Navy civilian matters.***

9. Did you know C. Mike Birge? ***Slightly – I mostly dealt with a supervisor under him.***

10. Did you know S. Comer? ***Yes – Commander, U.S. Naval Station.***

11. At the time of your official duty in Panama, did the above named individuals work at the same agency or interagency under the U.S. Southern Command? ***Yes.***

12. In knowing the above individuals while you worked in Panama, did you have official contact (direct/indirect) with them in your official capacity? ***Yes***

13. In reference to Mr. Foxx, did you in your official capacity ever observe any unlawful treatment or unfair personnel management practices that was prohibited by law (including discrimination, disparate treatment, threat or reprisal, or unfair/inequitable treatment)? ***Yes – Initially Mr. Foxx was given a 30-day Notice of Proposed Removal. Before the 30 days was over he was told he had to be off Rodman Naval Station before sundown or else. He wasn't given travel orders to ship his HHG's or truck, and it took 18 months for him to receive his HHG's. Furthermore, he wasn't given any pay due him or funds for travel expense. The JTR, Part II says "in "order for the Government to pay return transportation of civilians to CONUS he/she must remain in the overseas area for one year. Mr. Foxx was less than two weeks of meeting that requirement. Had he been given the full 30-day notice of Proposed removal, he would have met the one-year assignment period***

required for Government paid return travel expense. Other Navy employees were charged with various offenses and none were fired. Harvey Von Hollen and AF employee and my co-worker was charged with travel fraud and was given a reprimand. CONCLUSION: Two employees charged with travel fraud, one employee (Mr. Foxx) was fired and the other employee (Mr. Von Hollen) was given an Official Reprimand. Mr. Foxx was even allowed to serve his 30-day notice period. He was threatened (told to leave by sundown or else) and was allowed to receive money owed him/and lump sum Annual Leave payment. Where is the equal/fair treatment of all employees?

14. In reference to Mr. Von Hollen, do you have any knowledge directly or indirectly regarding any alleged misconduct? ***Yes.***

15. Did you personally intervene on Mr. Von Hollen's behalf? ***Yes – I wrote a letter on his behalf and met with the AF IG Team regarding his travel fraud case. I recommended that he be allowed to remain in his position and he was then given an Official Reprimand.***

16. Did you personally intervene on Mr. Foxx's behalf? ***Yes – I met with Charles Berg, Chief Manpower and Navy's spokesperson & requested that Mr. Foxx be allowed to stay for the 30-day notice period, so he would meet the one-year required for return travel at Government expense. Instead it was leave or else.***

17. In reference to Mr. Foxx and Mr. Von Hollen, in your official capacity, were they similarly situated? ***Yes – They were both NM-11s, one worked for the Air Force and the other worked for the Navy. However, they were both serviced by the Civilian Personnel Office, Howard AFB, Panama under the jurisdiction of the U.S. Southern Command.***

18. Were they treated differently regarding personnel management practices? ***Yes.***

19. Were you ever inquired upon from the offices of any O.P.M. or E.P.A. regarding any prohibited employment practices or any investigation regarding Mr. Foxx? ***No.***

20. Did any member of the offices of O.P.M. or E.P.A. contact you at all between July 28, 1999 through June 01, 2000 regarding an investigation about Mr. Foxx? ***No.***

21. Would this be a harmful error to say you were contacted by O.P.M. or E.P.A. investigators, when in fact you were not? *Yes.*

22. If so contacted, what would you have told investigators about official knowledge regarding the treatment of Mr. Foxx? ***Mr. Foxx was not allowed to remain in Panama during the 30-day notice period. He was told to leave by sundown or else. Was not given any money due him and basically stripped of all entitlements. How can an agency have two employees charged with the same offense and one fired and the other given a reprimand. Mr. Von Hollen remained employed and was promoted and ten years later Mr. Foxx is still trying to be reinstated. How just was that when all employees (Federal) are supposed to be governed by the same regulations and rules and treated so differently. Navy kept Mr. Foxx's HHGs for 18 months, broken open sealed shipping containers and damaged Mr. Foxx's personal effects, costing the Government thousands of dollars. His Official Personnel Folder was tampered with/and or destroyed. Yet no one has questioned Navy's wrongdoing and involvement.***

23. If your input and knowledge were omitted by O.P.M. and E.P.A. investigators, would such omission render a suitability determination faulty from the lack of information in your opinion? ***Yes.***

24. Was there anything unfair, immoral, disparate, reprisal regarding the treatment of Mr. Foxx after leaving the agency regarding travel or the handling of his household goods or personal property that was not warranted as part of his firing? ***Yes - It –as unfair to run him out of Panama without funds/transportation to the airport. During this time civilian/military personnel had travel restrictions and I personally drove Mr. Foxx to the airport and wasn't sure that I could take and safely return to the base due to the travel limitations and my not being familiar with the downtown area.***

25. In you official capacity, were there ever any prohibited personnel practices, unfair and inequitable treatment, or discriminatory practices subjected to Mr. Foxx that were not subjected to other similar situated individuals? ***Yes – I could better understand (not approve) of what happened to Mr. Foxx,***

if he was new to the Federal service and serving a probationary period. However, he was a career employee (with veteran status) with 18 years of service and numerous prior awards and management gave him the most serious punishment possible. What happened to an Oral Admonishment, Official Reprimand, and 3-5 day suspension? Those kinds of penalties were given to other employees. How unfair does it have to be, before someone can take notice and do something about the inequities done to Mr. Foxx during his employment in Panama?

26. In your official capacity, should've Mr. Foxx been terminated in comparison to the other similarly situated individuals? ***No.***

27. Did Mr. C. Mike Birge (MWR) encounter misconduct while with the agency or interagency under the direction of the U.S. Southern Command? ***Yes.***

28. Was Mr. Birge terminated? ***No.***

29. Could Mr. Birge's treatment be considered different from Mr. Foxx? ***Yes.***

30. Did R.A. Kelly encounter misconduct with the agency or interagency under the direction of the U.S. Southern Command? ***Yes – He sold Government property for his own gain. Nothing happened to him while he was in Panama.***

31. Was he treated differently from Mr. Foxx? ***Yes – see above.***

32. Are you aware of any unfair practices that Mr. Charles Berg directed toward Mr. Foxx? ***Yes – Mr. Berg was management representative and made the decision to have Mr. Foxx removed from Federal service. Mr. Berg would not allow Mr. Foxx to complete the 30-day notice period prior to removal. Basically, he saw that Mr. Foxx was stripped of all entitlements.***

33. Are you aware of any unfair practices that Mr. William Wing directed toward Mr. Foxx? ***Yes – He refused to give Mr. Foxx his final pay and payment for annual leave and delayed numerous months before providing a fund citation so that Mr. Foxx's HHGs could be shipped to the states. I personally believe Mr. Wing's actions were directed by Charles Berg.***

34. In accordance with the rules, regulations, or law regarding official notice, did Mr. Foxx receive due process or adequate personnel management protection under the 30-day notice? ***No.***

35. Was Mr. Foxx promised a promotion/upgrade for reporting to Panama as part of his recruitment? ***According to Mr. Foxx, he was (I believe him) and his selection was during the time that there was turmoil and restrictions in Panama. My boss, the Civilian Personnel Officer left two days after I got there. Since Mr. Foxx was being considered for a job in Germany at the time, management probably promised him a promotion in order for him to commit.***

36. Did Mr. Foxx get the promised promotion/upgrade while in Panama? ***No.***

37. Did you ever check Mr. Foxx's personnel file? ***No – However, the Staffing Specialist for Navy did. As the Chief of the Branch I signed all personnel action and they were attached to the file. My review was to check remarks, accuracy of salary and the regulatory authority on the SF-50, Notification of Personnel Action prior to signing the SF-50.***

38. Did you ever see a transportation agreement with Mr. Foxx's name on it? ***No – That was the responsibility of the Staffing Specialist. Normally the transportation agreement is signed by the employee at their stateside base before they are given the travel orders. The signed agreement authorizes then use of Government funds. If by chance there wasn't an agreement in the file, the Staffing Specialist should have had Mr. Foxx sign another agreement.***

39. Did you personally ever destroy any information in Mr. Foxx's personnel file? ***No.***

40. When you did examine Mr. Foxx's personnel file, what did you see in it? ***N/A (see 37 above).***

41. Do you have knowledge of any other prohibited personnel practice that may have an affect upon the treatment of Mr. Foxx? ***There were numerous prohibited personnel practices committed by my former boss. That was the reason the AF IG Team was in Panama for 2 or 3 months. I don't believe those practices had any affect on the treatment of Mr. Foxx. Navy had its own agenda, and it seems unlikely that one man***

can stand alone and go up against Navy when the system doesn't seem to play fair.

42. In your official capacity and opinion, should Mr. Foxx be reinstated into Federal service? ***Yes – Knowing all the facts of the charge and the firing of Mr. Foxx, if I was the Staffing Specialist considering Mr. Foxx for reinstatement I would work very hard at trying to get him reinstated. He has been punished to the extreme when consider another individual was charged with the same offense and received a reprimand. Had Mr. Foxx not been fired he would be within a few years of meeting the 30-year period for retirement.***

43. When decisions were being made in reference to Mr. Foxx, Mr. Von Hollen and others, who were the individuals involved? ***F. Michael Bailey, Van Balzer, Charles Berg, Captain Comer, Commander Kelly, William Wing, the AF IG Team (I can't remember the names) however, they were in Panama approximately three months. I was there and met with the IG Team numerous times regarding Von Hollen and I met and talked to Bill Wing and Charles Berg, regarding George Foxx.***

44. Of the above named decision-makers, have any of the decision-makers been contacted by O.P.M. or E.P.A. investigators o your knowledge? ***I wouldn't know. Since they didn't contact me, who's to say who they contacted.***

45. Based on prohibited personnel practice, should Mr. Foxx have been fired in relations to other similar situated individuals who were not? ***No.***

46. Would you consider the actions by the Navy, agency, interagency or U.S. Southern Command as "promoting the efficiency of the service" via the termination action toward Mr. Foxx? ***No.***

47. In a comparative analysis, would you in your opinion consider an investigation or suitability determination by O.P.M. or E.P.A. to be valid, sound, or in good personnel management practice based on your official knowledge of the Navy, agency, interagency, or U.S. Southern Command treatment toward Mr. Foxx? ***Mr. Foxx was charged with travel fraud. Consideration was not given of his prior outstanding performance or his more than 15 years of Federal service. Regardless***

of how good Mr. Foxx's performance was prior to and during his employment in Panama he was fired due to a $27.00 error on a travel voucher. Mr. Von Hollen was charged with travel fraud too. To my knowledge he never attended training, he visited his family. If you took into consideration the cost of airfare, per diem, etc., it was much greater than $27.00. However, Mr. Von Hollen was not fired, he was given a reprimand. How can the treatment of Mr. Foxx be valid or good personnel management practice when another employee commits the same violation and more or less receives a slap on the wrist? For one it was okay and the other one's Federal career was ruined.

48. In a comparative analysis, would you consider the adverse actions taken by the agency, Navy, O.P.M. or E.P.A. "to be promoting the efficiency of the service" when omitting prohibited personnel practice including discrimination or disparity? *The disparity/discrimination is stated in 47 above. The efficiency of the service was for one employee and not for the other. Mr. Foxx lost his career and Mr. Von Hollen was reward for his wrongdoing. Von Hollen remained in Panama and to my understanding was promoted. O.P.M. did not*

contact me and as it stands now they won't even consider Mr. Foxx's suitability for reinstatement until December 11, 2001. How long must he be punished for a $27.00 error.

49. Your period of duty in the U.S. Southern Command was:

June 1989 to ***October 1991***

From To

DECLARATION

I HEREBY declare under the penalty of perjury and under the provisions of 28 U.S.C. Section 1746 that the foregoing is true and correct to the best of my knowledge.

/s/_____
ELSIE L. MILLS

Executed on this 3rd day of July, 2000.

Notary Public

DONNA K. SIMON, Notary Public
In and for the State of Ohio
My Commission Expires Dec. 1, 2003
Stamp or Seal

/s/_____
Dayton, Ohio Donna K. Simon